IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Rameshwar & Ors. vs. The State of Rajasthan.

D.B.Cri. Appeal No.267/85

Under Section 374 Cr.P.C. against the judgment dated 29.07.85 passed by the Addl. Sessions Judge, Bhilwara , in Sessions Case No.12/1983.

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Date of Judgment: 04th October , 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.Sandeep Mehta for the appellants.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal is filed by the accused appellant s Rameshwar and Magna being aggrieved by the decision of the court of the Addl. Sessions Judge Bhilwara in Sessions Case No.12/1983 dated 29.07.85.

On 05.04.83 Kalu gave a written report to SHO , Police Station Shahpura that he has been informed by Barda that at about 03.00 PM accused Rameshwar drew his herd of sheep in to the filed of Dev Kishan claiming that he will graze his herd in that filed. At that time Dev Kishan and Nathu were harvesting the crop. At that time Ladu and Magna also joined Rameshwar. They assaulted Dev Kishan and Nathu badly. In the nearby field Khani Ram and Prahlad were also grazing their sheep. All the three accused caused injuries by stick and 'barchi'. Subsequently they assaulted on Vardha and Mohan also. While these two persons, namely Dev Kishan and Nathu were taken to Police Station Shahpura, Devkishan died. On this information being received at police station Shahpura the same was forwarded to Police Station Phuliya Kalan because the area of that police station was involved. On receiving such information , FIR No.23/83 was registered under section 302, 307, 326, 325/34 and 109 IPC against four accused persons, namely Ladu, Rameshwar, Ramkaran and Magna, out of which Ladu is already dead. Accused Ram Karan was acquitted by the trial court.

Presently, the appeal is being preferred only by Rameshwar and Magna. After filing of the charge sheet, the case was

committed to the court Sessions , from which it was made over to the trial court. Charges were framed against the accused persons under section 324 and 302/34, 326/34 , 325/34 and 323 IPC. Accused denied the charges and claimed trial. At the trial 21 witnesses were examined. The accused was examined under section 313 Cr.P.C. Accused Rameshwar claimed that he was assaulted by deceased and Nathu and Rameshwar claimed alibi and the other two accused denied their complicity . The doctor was re-examined and the accused were examined all over again. After the trial, the accused appellants were convicted and sentenced as under:-

1	*2*	*3*
	Appellant Rameshwar -	
(a)	Convicted under section 302 IPC	Sentenced to undergo life imprisonment and to pay fine of Rs.100/-, in default of payment of fine to undergo further R.I. Of 3 months.
(b)	Also convicted under section 326/34 IPC	Sentenced to undergo 2 years' R.I. And to pay fine of Rs.100/- in default of payment of fine to undergo further RI. Of 3 months.
(c)	Also convicted under section 325/34 IPC	Sentenced to 1 year's R.I. and to pay a fine of Rs.100/- in default of payment of fine to undergo further R.I. Of 3 months.
(d)	Also convicted under section 323 IPC	Sentenced to undergo 3 months' R.I.

1	*2*	*3*
	Appellants Magna & Ladu	
(a)	Each convicted under Section 326/34 IPC	Sentenced to undergo 2 years' R.I. And to pay fine of Rs.100/- in default of payment of fine to undergo further R.I. Of 3 months.
(b)	Also convicted under section 325/34 IPC	Sentenced to undergo 1 year's R.I. And to pay fine of Rs.100/- , in default of payment of fine to undergo further R.I. Of 3 months.
(c)	Also convicted under section 323 IPC	Sentenced to undergo 3 months' R.I.

The learned counsel for the accused submitted that it was not an assault in the manner in which the complainants have tried to make out . It was on the doing of the complainant that the temperament got hotted up and there was a kind of conflict in between both the parties which related to the grazing of the herd. According to the prosecution case itself, the injured Nathu, in his statement has stated that there was no conflict in between the parties prior to this incident and before the actual incident started it was about an hour that both the parties were engaged in verbal duel. When the incident as alleged occurred, after an hour's deliberations and exchange of hot words, then naturally it can be seen that both the parties shared the factum of aggression. When the accused himself was involved in the aggression, may be oral , as admitted and the

accused Rameshwar has stated in so many words under section 313 Cr.P.C. that the complainants have assaulted him, a case under section 302 IPC cannot be made out against the accused . At best a case under Section 304-II IPC may be made out because it is on the spur of the moment that the dispute had occurred and both the parties were first indulged in to a verbal duel. This brings the case under Exception 1 of Section 300 IPC. In this background, the learned counsel for the appellant urged that if the accused Rameshwar who has been convicted under section 302 IPC his conviction may be converted under section 304-II IPC and he be sentenced to the period already undergone , which is around 41/2 years, then ends of justice would be met.

Accused appellant Magna had only been convicted under section 326 IPC. He has remained behind the bars for nearly six months. The incident pertains to the year 1983. It would be too late in the day to send the accused behind the bars, after nearly 24 years of the incident, when they are on bail.

Per contra, the learned public Prosecutor urged that it was a brutal assault on the accused. Both the injured and the deceased had sustained many injuries. Apart from Nathu, there are

other injured persons also. In this background conviction under section 304-II IPC would not be justified and conviction of accused Rameshwar under section 302 IPC has rightly been recorded by the trial court.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record

Prevarication on the part of the prosecution about the incident is writ large. Out of the four accused persons one has been acquitted and one is dead. There remains only two accused persons , Rameshwar and Magna. The injured has accepted the fact that the parties entered into a duel and there were arguments on the question whether the herd of sheep can be permitted to graze or not. This is also given in the prosecution case that the complainants tried to take the cattle away and in these circumstances , the case of the prosecution cannot be said to be one which would fall in any of the clauses firstly to fourthly of Section 300 IPC and it would fall in exception -1. In that background when the accused Rameshwar, who has been convicted under section 302 IPC ,has remained for more than 4 years behind the bars, we deem it proper that his conviction be

altered from under section 302 IPC to under section 304-II IPC and he be sentenced to be period already undergone. The conviction of accused Magna under section 326 IPC is maintained . His substantive sentence is reduced to the period already undergone. The accused appellants are directed to pay a sum of Rs.50, 000/- to the next of the kin of the deceased as compensation.

In the result, the appeal is partly allowed. The conviction of the accused appellant Rameshwar is set aside under section 302 IPC, instead he is convicted under section 304-II IPC. The conviction of accused Magna is maintained under section 326 IPC. The period of sentence already undergone is considered sufficient to meet the ends of justice and both the accused are directed to pay Rs.50,000/-as compensation to the next of kin of the deceased .

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

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